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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/884,894

06/19/2001

Daniel J. O'Sullivan

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07/02/2002

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EXAMINER

WARE, DEBORAH K

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 07/02/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/884,894

Applicant(s)
O'Sullivan

Examiner
Deborah Ware

Art Unit
1651



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Apr 11, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-15 and 20-42 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 8-15 and 20-42 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claim 8, drawn to an isolated Bifidobacterium of a specified strain, classified in class 424, subclass 93.1.
 - II. Claims 9-15 and 38-39, drawn to a method for inhibiting the replication of a microbe, classified in class 435, subclass 440.
 - III. Claims 20-26, drawn to a method for establishing a Bifidobacterium flora, classified in class 435, subclass 252.1.
 - IV. Claim 27, drawn to a method for preventing the replication of a microbe, classified in class 435, subclass 170.
 - V. Claim 28, drawn to a method for decreasing the risk of colon cancer, classified in class 514, subclass 8.
 - VI. Claim 29, drawn to a composition comprising a Bifidobacterium that secretes siderophore, classified in class 514, subclass 1.
 - VII. Claim 30, drawn to a method for obtaining a secreted siderophore from Bifidobacterium, classified in class 424 subclass 400.
 - VIII. Claim 31-32, drawn to a method of preparing a siderophore, classified in class 210 subclass 600.
 - IX. Claim 33 and 42, drawn to a sterile composition, classified in class 514, subclass 2.
 - X. Claim 34, drawn to an isolated siderophore, classified in class 435, subclass 260.

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- XI. Claim 35, drawn to an isolated siderophore which binds iron, classified in class 514, subclass 502.
- XII. Claim 36-37, drawn to a method for decreasing an amount of free iron, classified in class 210, subclass 610.
- XIII. Claim 40, drawn to a method for altering the expression of a siderophore, classified in class 435, subclass 477.
- XIV. Claim 41, drawn to a composition consisting essentially of a Bifidobacterium that secretes siderophore, classified in class 435, subclass 174.

2. The inventions are distinct, each from the other because of the following reasons: Because these inventions are distinct for the reasons given above and the search required for any one Group is not required for another Group, restriction for examination purposes as indicated is proper. Not all of the claims require a siderophore, or reduced iron, or iron conditions, and further claims are directed to both product and process wherein different features are critical to the respective claimed invention. A reference which may read on one group would not necessarily read on another group. In addition, the search is placed in different classes and subclasses for many of the groups. Therefore, restriction is deemed advisable at this time. It is possible that once allowable subject matter has been identified that the Groups or specific groups of claims can be rejoined. The restriction is deemed proper.

3. A telephone call was made to Mr. Provence on June 28, 2002 to request an oral election to the above restriction requirement, but did not result in an election being made

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Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is (703) 308-4245.



DEBORAH K. WARE
PATENT EXAMINER

Deborah K. Ware

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June 29, 2002